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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 2nd July, 1953

S.R.O. 1385.—Whereas the election of Shri Bhala Ram and Shri Kali Ram, as members of the Legislative Assembly of the State of PEPSU, from the Narwana Kalait constituency of that Assembly (now dissolved), has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Dharam Vir, General Secretary, PEPSU Depressed Classes League, Narwana, District Sangrur;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BARNALA (PEPSU)

ELECTION PETITION NO. 32 OF 1952

Narwana Kalayat Constituency of the Legislative Assembly of the Patiala and East Punjab States Union

CORAM:

Shri Jagjit Singh, M.A., LL.B., *Chairman.*

Shri Shiva Gopal Mathur, B.A., LL.B., }
Shri Dalip Singh Jain, M.A., LL.B., } *Members.*

Shri Dharam Vir, General Secretary, Pepsu Depressed Classes League, Narwana, District Sangrur—*Petitioner.*

Versus

1. Shri Bhala Ram, s/o Nathu Ram of Danauda Kalan.
2. Saudagar, s/o Rura of Kalayat
3. Albel Singh, s/o Uddami of Sancha Khera, P.O. Narwana
4. Kali Ram, B.A., LL.B., of Narwana.
5. Baldev Singh, Pleader, Narwana.
6. Baldev Kishan of Bhana Brahmana, P.O. Narwana.
7. Raunaqi, s/o Hazari, Village Bhana Brahmana.

8. Gugan Bajaj of Kalayat.
9. Mangat Ram, s/o Gita Ram of Kalayat.
10. Pt. Narain Datt, Advocate, Sangrur.
11. Kaku Ram, B.A., LL.B. of Narwana
12. Birbal, s/o Suraj Bhan of Narwana.
13. Mukandi, s/o Maya Ram of Kharak Pandva, P.O. Kalayat.
14. Gauri Shanker, s/o Hazare Lal, village Ujhana, Narwana—*Respondents.*

JUDGMENT

This election petition relates to the Narwana Kalayat Constituency of the Legislative Assembly of the State of Patiala and East Punjab States Union. The facts of the case are that Shri Dharam Vir petitioner stood for election as a candidate from this constituency and he filed two nomination papers (No. 29 and No. 30) and the scrutiny took place on 1st December 1951 at Sangrur. S. Balbir Singh was the Returning Officer for this constituency. Besides the petitioner, respondents Nos. 1 to 14 also stood for election from this constituency. Respondents Nos. 3 to 14 filed their nomination papers as candidates for the general seats while the petitioner and respondents Nos. 1 and 2 filed their nomination papers for the reserved seat, this constituency being a double member constituency.

Both the nomination papers of the petitioner were rejected by the Returning Officer and the petitioner has urged that at least one of his nomination papers was according to law and without any defect, error or omission and the petitioner challenges the order of the Returning Officer and says that his order is without jurisdiction and contrary to the provisions of Section 36 of the Representation of the People Act. The petitioner in his petition does not challenge the rejection of nomination paper No. 29 and has confined himself to the rejection of nomination paper No. 30 which is Ex. P.2/A.

The petitioner also objects to the acceptance of the nomination paper of Bhala Ram, respondent No. 1 on the ground that on the date of the nomination he was under 25 years of age and was thus not qualified to be a member of the State Assembly and was disqualified on account of his being under age. As a result of the election Shri Bhala Ram, respondent No. 1 was declared elected as against Saudagar, respondent No. 2 from the reserved seat. The result of the election was published by the Reurning Officer in the Patiala and East Punjab States Union Government Gazette, dated 6th February 1952 The petitioner submits that the Returning Officer improperly rejected his nomination paper and has improperly accepted the nomination paper of Bhala Ram, respondent No. 1 (the successful candidate) and prays that the election be declared as void. He also prays that the election as a whole is totally void Shri Kali Ram, respondent No. 4 is the successful candidate from the general seat who has also been impleaded as respondent in this case. A copy of the election petition was published in the Government Gazette of the Patiala and East Punjab States Union, dated August 17, 1952 and notices of the petition were served on all the 14 respondents to the petition. Shri Bhala Ram, respondent No. 1 has filed his written statement while Saudagar, respondent No. 2 and Baldev Singh, respondent No. 5 have filed a joint written statement. Mukandi, respondent No. 13, Albel Singh, respondent No. 3, and Kali Ram, respondent No. 4 have also filed their respective written statements, while *ex parte* proceedings were ordered against Shri Narain Datt, respondent No. 10, Shri Mangat Ram, respondent No. 9, Shri Gugan respondent No. 8. Shri Kaku Ram, respondent No. 11, Shri Ronki, respondent No. 7. Shri Baldev Krishan, respondent No. 6, Shri Birbal, respondent No. 12 and Shri Gauri Shanker, respondent No. 14, who did not appear in spite of personal service.

On 1st September 1952 Shri Dalip Chand and Shri Jeshtha Nand filed two separate petitions under Sections 90 and 119 of the Representation of the People Act, 1951 praying that they may be joined as respondents in the election petition. These applications were accepted by our orders, dated 21st October 1952 and the applicants were allowed to be joined as respondents provided they give cash security of Rs. 400 each for costs as required by Section 119 of the Representation of the People Act, 1951. Security was to be deposited on or before 5th of November, 1952 and in case of default the respective applications were to be considered as rejected. As the required securities by Jeshtha Nand and Dalip Chand who wanted to be impleaded as respondents were not deposited at all, their applications were finally rejected on 5th November 1952.

On 30th August 1952 Shri Baldev Singh, respondent No. 5 had presented an application praying that he should be transposed as a petitioner under Order 1, rule 10, C.P.C. His petition was rejected by our Order, dated 21st October 1952 and he was not allowed to become a co-petitioner.

Shri Bhala Ram, respondent No. 1 and Shri Kali Ram, respondent No. 4 who were the successful candidates have contested the present election petition while the other respondents who have filed the written statements have admitted the allegations made in the petition. The contesting respondents state that the nomination papers of the petitioner Dharam Vir were properly rejected by the Returning Officer and that Bhala Ram, respondent No. 1 was of proper age *i.e.* more than 25 years on the day of the nomination and that his paper was properly accepted and further state that the objection of age was not taken by the petitioner before the Returning Officer and as such the said objection cannot be taken in the present election petition They further urge that Shri Dalip Chand and Shri Jeshta Nand were duly nominated candidates and the petitioner has not made them respondents in the petition and thus the petition is liable to be rejected on this ground alone. They also say that the present petition does not contain the necessary particulars as required by Section 83 of the Representation of the People Act, 1951 and further that the reliefs claimed in the petition are not in accordance with the provisions of Section 84 of the Representation of the People Act.

Shri Baldev Singh, respondent No. 5 has taken a plea in his written statement that the nomination papers of Mukandi and Gauri Shanker, respondents Nos. 13 and 14 were improperly rejected and that the present election is liable to be set aside on this ground also The contesting respondents Nos. 1 and 3 say that respondent No. 5 is not competent to take this objection regarding the improper rejection of the nomination papers of Mukandi and Gauri Shanker as the same has not been taken in the regular election petition filed by Dharam Vir. On the pleadings of the parties the following issues were framed:—

1. Whether the nomination paper No. 30 of the petitioner was improperly rejected by the Returning Officer, Sangrur, as alleged in para. 3 of the petition and has it materially affected the result of the election?

2. Whether Shri Bhala Ram, respondent No. 1 was under 25 years of age and his nomination paper was improperly accepted by the Returning Officer? If so, what is its effect?

3. Whether the petitioner is debarred from raising the objections referred to in issue No 2 for the reason that no such objection was taken before the Returning Officer?

4. Whether Shri Dalip Chand and Shri Jeshta Nand were duly nominated candidates and the petition is liable to be rejected due to their not having been impleaded as respondents?

5. Whether the petition does not contain the necessary particulars, as required by Section 83 of the Representation of the People Act, 1951 as alleged in para. 1(b) of the preliminary objections of the written statement of Shri Bhala Ram, respondent No. 1? If so, what is its effect?

6. Whether the reliefs claimed in the petition are not in accordance with the provisions of Section 84 of the Representation of the People Act? If so, what is its effect?

7. Whether Shri Baldev Singh, respondent No. 5 is competent to take up the objection that nomination papers of Mukandi and Gauri Shanker, respondents Nos. 13 and 14 were improperly rejected by the Returning Officer?

8. Whether the nomination paper of Mukandi, respondent No. 13 was improperly rejected by the Returning Officer, as alleged in para. 6 of the written statement of Shri Baldev Singh, respondent No. 5 and has that materially affected the result of the election?

9 Whether the nomination paper of Gauri Shanker, respondent No. 14 was improperly rejected by the Returning Officer, as alleged in para. 6 of the written statement of Shri Baldev Singh, respondent No. 5 and has that materially affected the result of the election?

10. To what relief, if any, the petitioner is entitled?

FINDINGS

Issue No. 1.—Shri Dharam Vir, the present petitioner, filed nomination paper No. 30 which has been produced by Shri Benarsi Dass, Election Qanungo P.W. 1 and which has been marked as Ex. P.2/A and its certified copy has been marked as Ex. P.2. Shri Pohlu P.W. 8 is the proposer and Shri Manga P.W. 9 is the seconder in this nomination paper. Shri Pohlu, the proposer, has thumb marked against column No. 12 which is meant for the signature of the proposer while Manga P.W. 9 has signed against column No. 16 which is meant for the signature of the seconder. Shri Baldev Singh respondent No. 5 in the petition, the rival candidate made an objection before the Returning Officer against this nomination form on the ground that the thumb mark of the proposer has been attested by the Additional District Magistrate, Sangrur, who is not authorised under law to attest the same, and moreover the Additional District Magistrate attesting the thumb mark has not specifically written in his attestation that Pohlu had thumb marked in his presence and further has not written that Pohlu was identified to his satisfaction. On this objection the nomination papers were rejected by the Returning Officer, S. Balbir Singh, on 1st December 1951. Shri Pohlu has appeared as P.W. 8 before us and states that he was the proposer and had affixed his thumb impression on the nomination paper and that his thumb impression was attested by the Additional District Magistrate, Sangrur in whose presence he had affixed the thumb impression. He also states that the nomination paper was signed by Manga also. Shri Manga P.W. 9 has also appeared as a witness and deposes that he had signed the nomination paper in the presence of the A.D.M., Sangrur and that Pohlu had put his thumb impression on the same. He identifies his signatures on the nomination paper No. 30. S. Haqiqat Singh who was the A.D.M., at Sangrur during the election days has also appeared as a witness in this case. He states that he had attested the thumb impression of the proposer and the signature of the seconder on the nomination paper No. 30 (Ex. P.2/A). He further states that the proposer and the seconder had appeared before him. He says that he is not definite whether the thumb impression or the signature were put in his presence and further states that so far as he remembers the thumb impression and the signatures were already on the nomination paper and the proposer and the seconder had affirmed in his presence that the thumb impressions and the signatures were theirs. He identifies his own signatures which he had affixed as A.D.M. while attesting the thumb impression and the signature. This witness specifically says that he was not the Returning Officer for any of the Constituency in the last general elections and that he had received no instructions authorising him to attest the thumb impression or the signatures of the proposers or the seconders. He says that he was not personally acquainted with the proposer or the seconder and that he had satisfied himself with the identity of the proposer and the seconder from Shri Brish Bhan, Chamola Ram and Sat Pal Advocates who had come to his court along with the proposer and the seconder. He also admits that he had not written in his attestation that he had satisfied himself about the identity of Pohlu and Manga proposer and the seconder respectively.

Sub-clause (2) of rule 2 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951 reads as follows:—

> "2(2) For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the Presiding Officer or such other officer as may be specified in this behalf by the Election Commission and such officer on being satisfied as to his identity has attested the mark as being the same of such person."

According to this rule the thumb impression of Pohlu proposer should have been affixed in the presence of the Returning Officer or such other officer mentioned in the sub-rule above. This not having been done, the attestation of the A.D.M., Sangrur is invalid and is against law. The nomination paper No. 30 which has been challenged in the election petition was thus properly rejected; as the defect was of a substantial character. Issue No. 1 is decided against the petitioner and the question of the election having been materially affected does not arise.

Issues Nos. 2 & 3.—Are taken together. Issue No. 2 relates to the age of Bhala Ram, respondent No. 1 and is the most important issue in the petition. Manga, P.W. 9, Albel Singh, P.W. 10 and Dharam Vir, petitioner, P.W. 16 state that the objection against Bhala Ram, respondent No. 1 relating to his age was raised by Dharam Vir before the Returning Officer at the time of scrutiny and that the petitioner had requested the Returning Officer to allow him one or two days' time

for proving that objection. But no time was granted and the Returning Officer had accepted the nomination paper of respondent No. 1 and rejected the objection of the petitioner that respondent No. 1 was under age. Leaving aside this oral evidence that the objection covered in issue No. 2 was made before the Returning Officer, there is no law which debars the present petitioner from raising this objection for the first time in this election petition. Under these circumstances there is no force in the objection contained in issue No. 3. Hence issue No. 3 is decided against the respondents and in favour of the petitioner.

The case of the petitioner is that the date of birth of Shri Bhala Ram respondent No. 1 is 6th May, 1929 and thus he was under 25 years of age on the day of the filing of the nomination paper in November, 1951. Shri Bhala Ram respondent No. 1 on the other hand states that his date of birth is 6th May 1924 and he was not under age in the month of November, 1951 and was over 27 years and was qualified to stand in the election and was not disqualified, as being above 25 years. Three certified copies of the birth entries from the birth register have been produced which are Ex. P.3, P.4 and P.19. Ex. P.3 and Ex. P.19 are one and the same. The correct Serial No. is 2876. In Ex. P.3 by mistake it was put as 3876. According to Ex. P.3 and P.19 a son was born to Nathu father of respondent No. 1 in village Danoda Kalan on 2nd Magh, 1977 Bk, which is equivalent to 2nd Magh of the year 1920 A.D. Both the parties admit that Ex. P.3 and P.19 do not relate to Bhala Ram respondent No. 1. According to Ex. P.4 a son was born to Nathu father of respondent No. 1 at village Danoda Kalan on 2nd Poh of Samvat 1984, which is equivalent to 2nd Poh of the year 1927 A.D. Both the parties also admit that even Ex. P.4 does not relate to Bhala Ram respondent No. 1. So Ex. P.3, P.4 and P.19 are of not much use in determining the age of respondent No. 1.

Shri Bhala Ram admits in his statement made before us that he had completed the admission form Ex. P.6/A and had submitted it to the Punjab University Office at Solan for Matriculation Certificate on the basis of Social Service and that the form bears his signatures. He also admits to have written the other entries appearing in that form. Against the column 'Roll No.' assigned by the East Punjab University Bhala Ram respondent No. 1 has written 5563 and against column 'Roll No. assigned by the Punjab University at Lahore', Shri Bhala Ram respondent No. 1 has written 59571. The Roll No. on this form Ex. P.6/A as assigned by the East Punjab University at Solan is 3968. Shri Bhala Ram had first submitted the admission form for the Matriculation Examination to the Punjab University at Lahore and had chosen Hissar to be his centre. Consequently in Ex. P.6/A Shri Bhala Ram has stated his Roll No. assigned by the Punjab University at Lahore to be 59571. Due to riots he could not complete the examination under the Punjab University at Lahore. After this he applied to the East Punjab University at Solan and filled up a form for permission to sit in the emergency matriculation examination to be held in the year 1948. Shri Kesar Mal, Assistant Registrar (Examinations) Punjab University Solan P.W. 12 appeared before us and has produced a form purporting to have been signed and completed by Shri Bhala Ram for permission to sit in the said Emergency Matriculation Examination. That form is Ex. P.10/A and its certified copy is Ex. P.10. In this form against column No. 6 (Roll No. assigned in 1947 by the Punjab University Lahore) the Roll No. given is 59571. This Roll No. is the same which has also been given in form Ex. P.6/A. The Punjab University at Solan assigned Roll No. 5563 to Shri Bhala Ram. This Roll No. 5563 also appears in Ex. P 6/A against column 'Roll No. assigned by the East Punjab University'.

Shri Bhala Ram states that in Ex. P.6/A (Application form for the grant of a Matriculation Certificate on the basis of Social Service) he gave the date of birth as 6th May, 1924 and since the digits of the year (1924) were disfigured, so he wrote the full date of birth for the second time in the same column. He says that both these entries relating to the date of birth were made on the same day although with different ink, and with different pen. In the form Ex. P.10/A which was also submitted to the Punjab University at Solan and was submitted earlier than Ex. P.6/A the age on 1st of October, 1947 was given as 18 years 4 months and 13 days, according to which the date of birth falls in May 1929. Ex. P.10/A is a complete form in all respects and a fee of Rs. 5 is also mentioned to have been *sent vide* Postal Order No. H 255978/B/2-190823, dated 18th December 1947. By going through the particulars relating to name, father's name and the subjects offered in the examination etc. form Ex. P.10/A appears in all respects to be relating to Shri Bhala Ram respondent No. 1. But Shri Bhala Ram in his statement made before us denies to have signed, completed or submitted this form. Now the question before us is whether the correct year of the birth of Shri Bhala Ram respondent No. 1 is 1924 or 1929. The result of the Election in dispute was published in the Government Gazette on 6th February 1952. After the publication of this result, when Shri Bhala Ram respondent No. 1 had succeeded in the election, on 13th March

1952 he applied to the Punjab University at Solan for a duplicate certificate. The application is marked as Ex. P.11/A and its certified copy is marked as Ex. P.11. A reply to this application was sent by the University to Shri Bhala Ram *vide* letter No. 2255/ER, dated 19th March 1952 which has been marked as Ex. P.11/B in which he was informed that the duplicate certificate asked for cannot be issued as the date of birth given in the admission form Ex. P.6/A has been changed without initial of the Officer attesting the form. He was, therefore, advised to produce some proof regarding his date of birth or an affidavit made by his parent before a 1st Class Magistrate. In compliance with this letter Shri Bhala Ram respondent No. 1 sent a letter to the Punjab University dated 20th October 1952, which is Ex. P.14/A and its certified copy is P.14. Along with this letter the affidavit of Shri Nathu, father of respondent No. 1 dated 17th October 1952 duly attested by the Additional District Magistrate was also sent. In the affidavit it has been stated by Nathu that the age of Bhala Ram is about 28 years. In the mean time the election petition in dispute had already been filed and received in the office of the Election Commission of India New Delhi on 3rd March, 1952. Shri Dharam Vir petitioner made complaints to the Superintendent, Secrecy Department Punjab University, Solan and the Registrar of the Punjab University *vide* his application dated 13th September, 1952 which are Ex. P.12/A (certified copy P.12) and Ex. P.13/A (certified copy Ex. P.13) in which he has stated that at the instance of Shri Bhala Ram the year of the birth in the admission forms has been changed from 1929 to 1924 and that the necessary inquiry should be made and action taken against the offender. On 25th October, 1952 Shri Kesar Mal, Assistant Registrar (Examinations) (P.W. 12) wrote a remark in red ink on Ex. P.6/A that the date of birth of Bhala Ram according to the cut-list is 6th May 1929 and placed querry mark on it. After the affidavit of Shri Nathu had been received, letter No. 12842/ER dated 3rd November 1952 was issued to Shri Bhala Ram by Shri Kesar Mal P.W. 12 requiring him to show cause as to why he should not be declared as an unfit person to admission to any future examination, which is marked as Ex. P.15/A (certified copy Ex. P.15). The following remark was also made in that letter:—

> "On a close examination of your admission form and the record kept in the office it has come to the light that you wrote your date of birth as 6th May 1929 in your form This further confirmed from the entry made in the date of birth column against your name in the list of candidates typed in the office at an early stage. It appears to have been changed to 6th May 1924 at a later stage apparently in connivance with some one in the office staff."

In this letter Shri Bhala Ram was also advised in his own interest to give the name of the person with whose connivance he may have managed to have his date of birth changed.

During the days of finalization of the social service result of the Matriculation Examination, a cut list was prepared from the respective admission forms submitted by the candidates in which the date of birth of each candidate is also given. Shri Kashmiri Lal Manchanda, Head Assistant Punjab University, Solan P.W. 4 and Shri Kesar Mal, Assistant Registrar Examinations, Punjab University, Solan P.W. 12 have produced the manuscript of the cut-list and the fair typed cut-list made after the manuscript. The manuscript is Ex. P.16/A and the fair typed cut-list is Ex. P.5/A. In the manuscript there is an over-writing in the date of birth and 6th May 1924 has been over-written. In the typed fair cut-list which was duly compared with the original one, the date of birth of Shri Bhala Ram respondent No. 1 has been given as 6th May, 1929. Shri Kesar Mal P.W. 12 has also produced the original registration list regarding the students of the First Year Class sent by the Principal, Government College, Rohtak. In that return at Serial No. 183 there is an entry regarding Bhala Ram s/o Chaudhari Nathu Ram. His date of birth has also been entered, which is 6th May, 1929. This return has been signed by the Principal, Government College, Rohtak and his signatures have been identified by this witness. Copy of the relevant entry has been marked as Ex. P.9. In this entry the Roll No. of the student has also been given as 59571 of the year 1947. Shri Bhala Ram admits to have joined the 1st Year Class in the Government College, Rohtak and he remained there a student for some months. So it has been proved that this entry contained in the registration list for the year 1948 relates to Shri Bhala Ram respondent No. 1. On the strength of Ex. P.10/A and Ex. P.9 and the suspicious entry made in Ex. P.6/A Shri Kesar Mal P.W. 12 states that the correct date of birth supplied by Shri Bhala Ram to the University office is 6th May, 1929. He also states that the fair cut-list Ex. P.5 has been duly checked and verified by Shri Ved Parkash and has also been initialled by him. He says that the fair cut-list is preferable to the manuscript especially when there is an over-writing in the date of birth in the manuscript.

It has been argued that Ex P 10/A has not been proved, to be signed by Shri Bhala Ram respondent No 1 or has not been proved to have been duly completed by him and so Ex P 10/A is inadmissible in evidence

Section 67 of the Evidence Act runs as follows —

"If a document is alleged to be signed or to have been written wholly or in part by any person the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting"

In the commentary of this Section written by M Monir different modes of proving a signature or writing recognised by the Evidence Act have been given, which are as follows —

1 By calling the person who signed or wrote the document,

2 By calling a person in whose presence the document was signed or written

3 By calling handwriting expert

4 By calling a person acquainted with the handwriting of the person by whom the document is supposed to be signed or written

5 By comparing in court the disputed signature or writing with some admitted signature or writing

6 By proof of an admission by the person who is alleged to have signed or written the document that he signed or wrote it

7 By the statement of a deceased professional scribe made in the ordinary course of business that the signature on the document is that of a particular person

8 A signature is proved to have been made if it is shown to have been made at the request of a person by some other person *e g* by the scribe who signed on behalf of the executant

9 By other circumstantial evidence

The other relevant section in this connection is Section 73 of the Evidence Act which runs as follows —

"In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the court could have been written or made by that person may be compared with the one which has to be proved, although that signature, writing or seal has not been produced or proved for any other purpose

The court may direct any person present in the court to write or words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person"

Thus according to mode of comparison enumerated at No 5 of the commentary to Section 67 and Section 73 of the Evidence Act we have compared the signatures of Shri Bhala Ram respondent No 1 on Ex P 10/A with the admitted signatures on other documents (P 6/A, P 14/A R 2/A and the signatures made before the court on a plain paper etc) and we come to the conclusion that the signatures on Ex P 10/A are of Shri Bhala Ram respondent No 1 and that his correct age on 1st October 1947 as given in Ex P 10/A is 18 years 4 months and 13 days, according to which his date of birth falls in May 1929 It is clearly established that Shri Bhala Ram respondent No 1 with the help of some clerk in the Punjab University at Solan has tampered with the entry relating to age and that originally the date of birth was given as 6th May 1929 and that it was changed into 6th May 1924 In support of this finding there is another important document produced by Shri Kishan Sarup, Public Health Department P W 14 producing certified copy of entry No 88 from Vaccination register of the Public Health Department which is Ex P 18 According to that entry Shri Bhala Ram son of Nathu caste Chamar of village Danoda Kalan, police-station Narwana was vaccinated for the first time on 31st January 1930 and that on that date his age was one year According to this entry his date of birth falls in the year 1929 If his date of birth had been 1924 then on the date of the vaccination he would have been about 6 years of age We cannot believe that a boy of six years could have been entered as a boy of one year It is admitted by respondent No 1 that there is no other person Bhala Ram son of Nathu Chamar by caste in his village So it is proved that this entry relates to

respondent No. 1. So from this entry also it is proved that the year of birth of Shri Bhala Ram respondent No. 1 is 1929 and not 1924 as alleged by him.

Another witness Shri Bhagwan Das P.W. 5 manager Incharge of Arya Yatimkhana Ferozepore has also been produced by the petitioner. He has brought the school entrance register in which there is an entry at No. 909 regarding Bhala Ram and the date of birth mentioned in that entry is 31st May, 1929. This date of birth is written both in figures and words. He has also issued a certificate marked as Ex. P.7 which was prepared on the basis of that entry and the date of birth given in the certificate is 31st May 1929. On perusal of the original entry at No. 909 which is marked Ex. P.7/A (its copy being Ex. P.7/B) we find that the entry in question relates to one Bhala Ram son of Nathu of village Dhanuda. But the caste given in this entry is not Chamar or Harijan, but is entered as Hindu Jat. So in the absence of any further evidence that Shri Bhala Ram joined this school, we cannot say that this entry relates to Bhala Ram respondent No. 1, although Bhala Ram admits in his examination that there is no Bhala Ram son of Nathu of Danauda Hindu Jat by caste. Bhala Ram respondent No. 1 may have joined this school and may have given his caste as Hindu Jat, but in the absence of any other evidence no reliance can be placed on this document. Shri C. L. Paul, Assistant Accounts Officer, Comptroller's office, Patiala (P.W. 13) has produced the annual establishment return of the department of Sales Tax of the Pepsu State for the year 1951-52 which contains an entry regarding Shri Bhala Ram respondent No. 1, who was admittedly employed there as a lower division clerk in the office of the Sales Tax Officer, Sangrur. According to that entry his date of birth is 6th June, 1929, which has been marked as Ex. P.17/A. Even according to this entry the year of birth is 1929 and not 1924. There is no other satisfactory documentary or oral evidence on this point.

In view of this discussion we held that Shri Bhala Ram on the date of the nomination, in November 1951, was under 25 years and was not qualified to stand in the election and was disqualified as being under age. Hence issue No: 2 is decided in favour of the petitioner and against respondent No. 1 and that is nomination paper was improperly accepted by the Returning Officer. Obviously this has materially affected the result of the Election. If his nomination paper had not been accepted he would not have been allowed to stand in the election and Saudagar respondent No 2 would have been declared as elected unopposed from the reserved seat, there being no other candidate for the same.

Issue No. 4.—It is admitted by both the parties that Shri Dalip Chand and Shri Jeshtha Nand had filed their nomination papers and that the same were accepted on 1st December 1951, (the date of scrutiny) and that both of them withdraw their nominations on 4th December 1952, within the scheduled time fixed for withdrawals. For the sake of a proper discussion this issue can be divided in three parts:—

(a) Whether Shri Jeshtha Nand and Shri Dalip Chand were duly nominated candidate within the meaning of Section 82 of the Representation of the People Act.

(b) Whether their joining as respondents in the election petition was mandatory or simply directory.

(c) What is the effect of their having not been made respondents on the decision of the present election petition.

(a) 'Candidate' is defined in Section 79(b) and means a person who has been or claims to have been duly nominated as a candidate at any election. It cannot thus be denied that Shri Jeshtha Nand and Shri Dalip Chand were candidates within the scope of 79(b) at the election of this constituency. However, the expression 'duly nominated candidate' has not been defined in the Representation of the People Act. On the receipt of the nomination papers under Section 33, the Returning Officer under Section 35 informs the persons delivering the same of the date fixed for scrutiny. On such date the nomination papers are scrutinised and are either accepted or rejected according to the provisions of Section 36. Section 37 provides for withdrawals within a fixed period (i.e. the third day after the date of the scrutiny of the nomination which was 4th December 1952 in this case). When withdrawal has taken place under Section 37(1) it is the duty of the Returning Officer under Section 38 to prepare and publish the list of valid nominations in such a manner as may be prescribed. Section 54(6) reads as follows:—

> "In this section references to candidates shall be construed as references to candidates who were duly nominated and who have not withdrawn their candidature in the manner and within the time specified in sub-section (1) of Section 37."

The conclusion to be drawn from reading Section 38 with Section 54(6) is that the validly nominated candidates are those who after the acceptance of their nomination papers have not withdrawn and whose names are published under Section 38 and 'duly nominated candidates' include all those whose nomination papers have been accepted although they may have withdrawn. It follows that the expression 'duly nominated candidates' is wider than the expression 'validly nominated candidates'. The former expression includes atleast all candidates whose nomination papers were accepted and may have withdrawn from the contest. This distinction has been made clear by rule 2(f) of the Representation of the People Act (Conduct of Election and Election Petition Rules) 1951, which defines 'a validly nominated candidate' as a candidate who has been duly nominated and has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of Section 37 or in that sub-section read with sub-section 4 of the Section 39 as the case may be. So a candidate whose nomination paper has been accepted but who has withdrawn, is a duly nominated candidate. It is true that the word 'duly nominated candidate' has not been specifically defined in the Act. But from the discussion made above it is clear that Shri Jeshta Nand and Dalip Chand were no doubt duly nominated candidates.

(b) Sections 80 and 82 of the Representation of the People Act run as follows:—

"80. *Election petitions.*—No election shall be called in question except by an election petition presented in accordance with the provisions of this part.

82. *Parties to the petition.*—A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated."

It has been urged on behalf of the respondents No. 1 and 4 that the plain meaning of section 82 must be given effect to and that the word 'shall' in this section has been used in a mandatory sense and is not directory. On the other hand the counsel for the petitioner has urged that the word 'shall' has been used only in a directory sense and can be read as 'may'. He says that it is nowhere provided in the Act that a petition can be dismissed for non-compliance with the provisions of Section 82 and so the petition cannot be dismissed for non-compliance with Section 82.

Section 85 of the Act runs as follows:—

"85. *Petition when to be dismissed.*—If the provisions of Section 81, Section 83 or Section 117 are not complied with, the election commission shall dismiss the petition:

Provided that if a person making the petition satisfies the election commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor the election commission may in its discretion condone such failure."

So it is clear that non-compliance of Section 82 of the Act has not been included in Section 85 of the Act. It has been argued by the counsel for respondents No. 1 and 4 that this circumstance does not make any difference as in Section 90(4) the Tribunal is authorised to dismiss an election petition. Section 90(4) runs as follows:—

"Notwithstanding anything contained in Section 85 the Tribunal may dismiss an election petition which does not comply with the provisions of Section 81, Section 83 or Section 117."

We agree with the counsel for the respondents and consider that the Tribunal is fully empowered to dismiss the election petition if we hold that the provisions of Section 82 are mandatory and not directory. It has further been argued by the petitioner that the provision in Section 90(1) shows that the word 'shall' in Section 82 has been used in a directory sense. Section 90(1) reads as follows:—

"The Tribunal shall, as soon as may be, cause a copy of the petition together with a copy of the list of particulars referred to in sub-section (2) of Section 83 to be served on each respondent and to be published in the official gazette, and at any time within 14 days after such publication, any other candidate shall, subject to the provisions of Section 119, be entitled to be joined as a respondent."

The reply of the respondents No. 1 and 4 to this argument is that this provision relates not to the 'duly nominated candidates' but relates to 'any other candidate' other than the duly nominated candidates. It has also been pointed out that if we apply the provision of this sub-section to duly nominated candidates then they are

relegated to a position of being compelled to apply to become respondents and suffer the embarrassment of furnishing security under Section 119 of the Act. We do not agree with this agrument of the respondents and consider that Section 90(1) indicates that the word 'shall' used in Section 82 is not mandatory. It has been observed in Chapter XII Section 3 at page 372 of Maxwell's Interpretation of Statutes IX edition 1946 that unless a consequence is mentioned for the failure to do what is directed to be done, the word 'shall' will not have mandatory effect, but only directory effect. Since no consequence is provided for in the Act, the question has to be decided on the analogy of Order 34 rule 1 of the Civil Procedure Code. The provisions of the Civil Procedure Code have been made applicable by Section 90(2) of the Representation of the People Act. Order 34 rule 1 of the Civil Procedure Code reads as follows:—

> "*Parties to suits for fore-closure, sale and redemption.*—Subject to the provisions of this Code, all persons having an interest either in the mortgage security or in the right of redemption shall be joined as parties to any suit relating to the mortgage."

The word 'shall' used in this rule has been interpreted in several rulings as directory, and it has been held that parties not joined previously can be added subsequently also *vide* I.L.R. 45 Bombay 1009. The provisions of Order 1 rule 9 C.P.C. are also very clear on this point which reads as follows:—

> "*Order 1 rule 9—Mis Joinder and non Joinder.*—No suit shall be defeated by reason of the mis-joinder or non joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it."

As Shri Jeshtha Nand and Shri Dalip Chand had withdrawn, consequently no relief can possibily be claimed against them. Their non joinder or even joinder after the period of limitation could not make any difference so far as the present petition is concerned. All the candidates who actually contested the election and did not withdraw have been made parties and relief is to be given against successful candidates namely respondents No. 1 and 4. It has been argued on behalf of the respondents No. 1 and 4 that there is no proper petition before the Tribunal as contemplated by Section 80 of the Act as Shri Jeshtha Nand and Dalip Chand have not been made respondents. We do not agree with this argument and we consider that there is a proper petition before us and all the contesting candidates have been made respondents. It may also be pointed out that proper decision of the petition can be made even in the absence of the candidates who have not been joined as respondents. It may further be added that Shri Jeshtha Nand and Dalip Chand applied to be made parties under section 90(1) of the Act and they were allowed to become parties by our Order, dated 21st October 1952. But they themselves did not comply with the order and so they are to blame themselves.

(c) The counsel for the respondents No. 1 and 4 has referred to certain authorities published in the Gazette of India (Extraordinary dated 11th August, 1952, Part I Section 1 page 1893—relating to the Election Petition No. 19 of 1952, and Gazette of India Extraordinary dated 20th December 1952, Part II Section 3, page 1034 relating to the Election Petition No. 287 of 1952,) in which it has been held by the Election Tribunals that the provisions of Section 82 are mandatory and the petitions were dismissed on that account, but we have been referred to a large number of authorities by the counsel for the petitioner in which it has been held by the Election Tribunals that the provisions of Section 82 are directly and not mandatory and the petitions were not dismissed on account of non joinder of certain candidates who had withdrawn. Those candidates were either allowed to be impleaded although the statutory period of the filing of election petition had expired or the petitions were allowed to proceed in their absence as the successful candidates were already before them as respondents against whom relief was required to be made. In this case the petitioner has not claimed any seat for himself or for any of the respondents. Hence issue No. 4 is decided against respondents No. 1 and 4 and in favour of the petitioner

Issue No. 5.—Para. 1(b) of the preliminary objections of the written statement of Shri Bhala Ram respondent No. 1 reads as follows:—

> "The petition has not been presented in accordance with the provisions of Section 83 of the Representation of the People Act and does not contain material facts *viz.*,
>
> (i) It does not disclose whether the petitioner was entered as elector in the constituency;
>
> (ii) What are the party alignments of the petitioner:
>
> (iii) The number of votes secured by each candidate;

(iv) The facts how the result of the election was materially effected by the rejection of the petitioner's nomination paper and acceptance of the respondent's."

This issue was not pressed before us at the time of arguments and moreover, the objections contained in this issue are *prima facie* frivolous. Hence this issue is decided against respondent No. 1 and in favour of the petitioner.

Issue No. 6.—Section 84 of the Representation of the People Act reads as follows:—

"Relief that may be claimed by the petitioner.

The petitioner may claim any one of the following declarations:—

(a). that the election of the returned candidate is void;

(b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected:

(c) that the election is wholly void."

The reliefs claimed by the petitioner relevant to this issue are the following:—

(a) the illegal order of the Returning Officer rejecting the nomination paper of the petitioner may be set aside;

(b) the illegal order accepting the nomination paper of Bhala Ram respondent No. 1 may be quashed and set aside;

(c) it may be declared that the election of the respondent No. 1 Shri Bhala Ram as well as the election as a whole is totally void.

This issue was not pressed before us and is decided against the respondent No. 1 and in favour of the petitioner.

Issues Nos. 7, 8 *and* 9.—These issues were framed at the instance of Shri Baldev Singh respondent No. 5 and he has not produced any evidence regarding these issues and on 6th March 1953, he gave a statement that after studying the law on the point he does not want to press these issues and has conceded that a co-respondent cannot raise any additional objections which are not contained in the election petition. Hence these issues are decided in favour of the petitioner and against respondent No. 5.

Issue No. 10.—This is a double member constituency and in view of our finding on issue No. 2 regarding the improper acceptance of the nomination paper of Shri Bhala Ram respondent No. 1, on account of his being under age the election of both the successful candidates namely respondents No. 1 and 4 is held to be wholly void. Under the law in a double member constituency there is no option for the Tribunal but to hold the election of both the successful candidates to be void, although the objection may relate to only one of them.

The election should, therefore, be declared to be wholly void. The petitioner should also get the costs from the respondent No. 1. The issue is accordingly decided in favour of the petitioner.

The election petition is accepted and under Section 98(1) of the Representation of the People Act, 1951 the election from Narwana Kalayat Constituency for the Legislative Assembly of Patiala and East Punjab States Union is declared to be wholly void. Shri Bhala Ram has been found to be below twenty five years of age on the date of presenting his nomination paper, yet in order to get his nomination accepted he stated his date of birth to be 6th May 1924 instead of 6th May 1929. Some of the records of the Punjab University were got tampered with so that his date of birth may appear to be 6th of May, 1924 instead of the correct one. This conduct of the respondent No. 1 is disapproved. He had absolutely no justification for whatever was done by him. He should also pay the costs of the petitioner, which we fix at Rs. 250/-.

Pronounced this, the 29th day of May, 1953.

I agree.

(Sd.) JAGJIT SINGH—*Chairman.*

I agree.

(Sd.) SHIVA GOPAL MATHUR—*Member.*

(Sd.) DALIP SINGH JAIN—*Member.*

[No. 19/32/52-Elec.III/1069.]

S.R.O. 1386.—Whereas the election of Sardar Shamsher Singh, as a member of the Legislative Assembly of the State of Punjab, from the Ludhiana Sadar constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sant Singh, s/o Sardar Hukam Singh, 15, Model Town, Ludhiana;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, LUDHIANA

Harbans Singh, Barrister-at-Law—*Chairman.*

Hans Raj Khanna, B.A., LL.B.—*Judicial-Member.*

Parma Nand Sachdeva, B.A., LL.B.—*Advocate-Member.*

ELECTION PETITION No. 155 OF 1952

PETITIONER:

Shri Sant Singh s/o Shri Hukam Singh, 15 Model Town, Ludhiana.

(Candidate duly nominated for election to the Punjab Legislative Assembly, from Ludhiana Sadar Constituency.)

Versus

RESPONDENTS:

1. Shri Shamsher Singh son of Shri Dhan Singh, of Dhandari Khurd, Tehsil and District Ludhiana, (Candidate returned from the Constituency, mentioned above).
2. Shri Autar Singh s/o Shri Udha Singh, V. & P.O. Ayali Kalan, District Ludhiana.
3. Shri Bakhtawar Singh s/o Shri Joginder Singh (of V. Chak, Zail Dakha) C/o Moga Transport Company, Moga.
4. Shri Jogindar Singh, s/o Shri Waryam Singh, Advocate, Civil Lines, Ludhiana.
5. Shri Dasaundha Singh, s/o Shri Narain Singh, Advocate, Civil Lines, Ludhiana.
6. Shri Kartar Singh, s/o Shri Inder Singh, Advocate, Civil Lines Ludhiana.
7. Shri Lal Singh, s/o Shri Sahib Singh, V. & P.O. Nandpur, Tehsil and District Ludhiana.
8. Shri Manmohan Singh, s/o Shri Bachint Singh, V. Rajpura, P.O. Ludhiana, Tehsil and District Ludhiana.
9. Shri Milkha Singh, s/o Shri Bakhtawar Singh, V. & P.O. Gill, District, Ludhiana.
10. Shri Mewa Singh s/o Shri Ganda Singh, (V. Ladian Kalan, P.O. Ludhiana) now Advocate, District Courts, Ludhiana.
11. Shri Nasib Singh, s/o Shri Hazura Singh, V. & P.O. Mundian Kalan, Tehsil and District, Ludhiana.

Bawa Shiv Charan Singh, Advocate, for Shri Sant Singh, petitioner.

M/s. H. S. Doabia, Ajmer Singh and Joginder Singh, Advocates, for Shri Shamsher Singh, respondent No. 1.

Shri S. M. Sikri, Advocate-General, Punjab State assisted by Shri Balak Singh Bagga, Government Pleader, appeared for the State on 28th March, 1953.

ORDER

(PER HANS RAJ KHANNA, MEMBER)

Shri Shamsher Singh, Respondent, was elected to the Punjab Legislative Assembly from Ludhiana Sadar Constituency. Shri Sant Singh, who was one of

the candidates at the election, has filed the present election petition to question the election of Shri Shamsher Singh. It is stated by the petitioner that Shri Shamsher Singh is a Lambardar of Dhandari Khurd and thus held an office of profit and as such was disqualified from standing as a member under Article 191 of the Constitution of India. It was also alleged that Shri Shamsher Singh was an assessor of the court of District and Sessions Judge, Ludhiana, which was also an office of profit. It was further stated that Shri Shamsher Singh was a Director of the Ludhiana Central Co-operative Bank in which the Government of the Punjab had a financial interest. The allegations of corrupt practice were made against the respondent and it was stated that the electors in the Constituency had been made to take oath in the presence of Guru Granth Sahib to vote in favour of Shri Shamsher Singh, respondent. It was also stated that Shri Shamsher Singh appointed persons serving with the Punjab Government as Polling Agents. It was further alleged that Shri Shamsher Singh had incurred an unauthorised expenditure.

The respondent Shri Shamsher Singh denied the allegations against him. It was stated that the petition was not properly verified and also did not comply with the provisions of Sections 81 and 83 of the Representation of the People Act, 1951. The respondent, however, admitted that he was a Lambardar on the date of filing the nomination papers, but stated that he resigned that office, a day before the scrutiny of nomination papers. It was also stated that to be a Lambardar is no disqualification. The following three preliminary issues were framed:

1. Is the petition not properly verified? If so what is its effect?

2. Are paragraph 5 of the petition and the list, attached with the application or any part thereof, liable to be struck off for non-compliance with the provisions of sub-section (2) of section 83 of the Representation of the People Act, 1951, in respect of furnishing particulars?

3. Should the petitioner be permitted or required to give further and better particulars, and if so in what respect and on what terms?

The issues were decided by the Tribunal as per order dated the 25th October, 1952. (Annexure 'A').

After the statements of the parties, the following issues were framed on merits:

1. Is the post of Lambardari, held by Shri Shamsher Singh, respondent No. 1, an office of "Profit" under the Government of Punjab State, and as such a disqualification for being chosen as a member of the Legislative Assembly of the Punjab State?

2. If issue No. 1 is held against respondent No. 1, did he cease to be a Lambardar on 8th November, 1952 or thereafter but prior to 7th January, 1952, the date on which the polling started. If so, what is its effect?

3. If issue No. 1 is held against respondent No. 1 and the findings on issue No. 2 do not help him, has not the disqualification, arising from the holding of the office of Lambardari, been removed by The Punjab State Legislature (Prevention of Disqualifications) Act, 1952?

4. Can respondent No. 1 be said to be holding an office of "Profit" within the meaning of Article 191 of the Constitution of India, by his being an assessor under the Code of Criminal Procedure? If so, what is its effect?

5. Has the Government of Punjab State any Financial interest in the Ludhiana Central Co-operative Bank, Limited, Ludhiana, and if so, what is the effect of respondent No. 1 being a Director of the aforesaid Bank at the relevant time?

6. Did respondent No. 1 and the persons, mentioned in the list, exercise undue influence on the voters as detailed in para. 5(b) of the petition and the corresponding list? If so, what is its effect?

7. Did Shri Amrik Singh of village Ladhowal act as the polling agent of respondent No. 1 at Ladhowal Polling Station on 7th of January, 1952, and was he a Lambardar at the relevant date? If so, did respondent No. 1 commit a major corrupt practice under section

123(8) of the Representation of the People Act, 1951, by so appointing him, and what is its effect?

On the 19th November, 1952, the petitioner made a statement in which he stated that Shri Amrik Singh, mentioned in issue No. 7, was not a Lambardar on the relevant date. Issue No. 7 was struck off. On the 12th December, 1952, the petitioner made a statement that he could not lead any evidence on issues Nos. 5 and 6. Issues Nos. 5 and 6, therefore, remain unproved and are decided against the petitioner.

Issue No. 1.—Lambardars are appointed under the Punjab Land Revenue Act. Their function is to collect land revenue on behalf of the Punjab Government and to deposit the same in the State Treasury. For rendering this service, they get five per cent of the land revenue which five per cent is known as panchotra. Financially thus, it is a paying proposition to be a Lambardar. The fact that different Statutes had to be enacted to save lambardars from the disqualification of holding the office of profit also shows that the lambardars have always been considered by the legislature as holding office of profit. I shall, therefore, decide issue No. 1 in petitioner's favour.

Issue No. 3.—On this issue lengthy arguments have been advanced before us and we have also had the benefit of hearing the learned Advocate General.

Article 191 (1) (a) of the Constitution of India provides as under:

(1) A person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder,

(b) .....

(c) .....

(d) .....

(e) .....

It has already been held that the respondent No. 1, held an office of profit on account of being a Lambardar. The question, now arises, whether the legislature of the Punjab State has declared by law that the office of Lambardar would not disqualify its holder from being a member of the Legislative Assembly In this connection it will be useful to refer to the different provisions of law on the subject Punjab Act II of 1937 provides as under:

"*Preamble*.—Whereas it is expedient to provide in accordance with section 69 (1) (a) of the Government of India Act, 1935, that the holders of the offices hereinafter mentioned shall not be disqualified for election to the Punjab Legislative Assembly, it is hereby enacted as follows:

1. This Act may be called the Punjab Legislative Assembly (Removal of Disqualifications) Act, 1937.

2. *Removal of certain disqualifications.*—A person shall not be disqualified for being chosen as, or for being a member of the Punjab Legislative Assembly by reason only of the fact that he holds any of the following offices, namely:—

(1) the office of Parliamentary Secretary or of Parliamentary private Secretary, if and when created;

(2) any of the offices shown in the Schedule to this Act.

Schedule

1 Lambardar .....

2 .....

3 .....

4 .....

This Act was passed in pursuance of Section 69 of the Government of India Act of 1935. Section 69(1) provides as under:—

(1) A person shall be disqualified for being chosen as and for being a member of the Provincial Legislative Assembly or Legislative Council,

(a) If he holds any office of profit under the Crown in India other than an office declared by Act of the Provincial Legislature not to disqualify its holder,

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

A perusal of section 69(1) (a) shows that the provisions, under the Government of India Act 1935 and those under the Constitution of India, as given in article 191 para. (1) clause (a), were similar After the coming into force of the constitution, the Punjab Ordinance No. III of 1950 [The Punjab Provisional Legislature (Prevention of Disqualification) Ordinance, 1950] was issued by he Governor of the Punjab which provided *inter alia*:

"that a person shall not be deemed to be disqualified for being a member of the Legislature of the State of Punjab by reason only of the fact that he holds an office of Lambardar"

The Ordinance by its wording, according to section 1, was applicable only to the members of the Provisional Legislature of the Punjab. Subsequent to the above Ordinance, Punjab Act IV of 1950 [The Punjab Provisional Legislature (Prevention of Disqualification) Act 1950]; was brought on the Statute Book. The Act was similar in wording to the Ordinance No. III of 1950. This Act also provided that a person would not be deemed to be disqualified for being chosen or for being a Member of the State of the Punjab by reason only of the fact that he held an office, *inter alia*, of a Lambardar. Like the Ordinance, it was expressly provided in this enactment also that this Act would be applicable only to the Members of the Provisional Legislatures of the State functioning under Article 382 of the Constitution.

The general elections were held during December, 1951, and January 1952. On 9th of August, 1952, Punjab Act VII of 1952 entitled the Punjab State Legislature (Prevention of Disqualification) Act of 1952, was published in the *Extraordinary Gazette*. The Act runs as under:

"An Act to declare certain offices of profit not to disqualify their holders for being chosen as, and for being, members of the State Legislature.

It is hereby enacted as follows:—

1. (1) *Short title and commencement.*—This Act may be called the Punjab State Legislature (Prevention of Disqualification) Act, 1952.

(2) It shall be deemed to have come into force on the 26th day of January, 1950.

2 *Prevention of disqualification for membership of State Legislature.*—A person shall not be disqualified for being chosen as, and for being, a member of the Punjab State Legislature by reason only of the fact that he holds any of the following offices of profit under the Government of India or under the Government of the State of Punjab, namely:—

(a) Lambardar.

(b) Sub Registrar, whether departmental or honorary, notary public, oaths commissioner.

(c) Officer, non-commissioned officer, and other members of Indian Territorial Force,

(d) Officer in the Army Reserve of Officers,

(e) A member of any statutory body or authority, or a member of any Committee or other body appointed or constituted by the Punjab Government, and who is not in receipt of a salary but who is paid only travelling and daily allowance during the performance of his duties.

(f) A Parliamentary Secretary or a Parliamentary Under-Secretary.

3. *Repeal.*—The Punjab Legislative Assembly (Removal of Disqualifications) Act, 1937, and the Punjab Provisional Legislature (Prevention of Disqualification) Act, 1950, are hereby repealed.

The position, taken up by the respondent, is that the disqualification of the respondent on account of his being a Lambardar, was removed by the Punjab Act VII of 1952. It is contended that though this Act was enacted after the elections, it is expressly stated in the Act, sub-section (2):

"It shall be deemed to have come into force on the 26th day of January, 1950".

The learned counsel for the petitioners has argued that Punjab Act VII of 1952 contravenes Article 14 and as such it is not a valid enactment.

Before dealing with the question of validity of the above enactment, it is necessary to decide an objection that the Tribunal is not competent to go into the question of the validity of the enactment. Reliance is placed in this connection on observation made on page 293 of Indian Elections and Election Petitions by Srivastava wherein it has been laid down that an Election Tribunal would have no jurisdiction to question the legality of any Statutory provisions or rules. The observation is based upon case Shahbad Central (N.M.R.) 1927 (Hammond p. 635).

I, however, find that in a case reported in 1947 Privy Council page 73 Raleigh Investment Co., *Vs.* Governor General in Council, the question arose whether an Income Tax Officer was competent to go into the question as to whether the provisions of the Act were *ultra vires*. It was held by Their Lordships that the Income Tax Act contains machinery which enables the assessee effectively to raise the question whether or not a particular provision of the Act, bearing on the assessment made upon him, is *ultra vires*. It was held that a separate suit was not maintainable. The Representation of the People Act also provides a forum wherein disputes relating to the election of candidates are adjudicated upon. A machinery, having been provided, the Tribunal would be justified in going into the question and giving its finding with regard to the validity of the enactment

The learned counsel for the petitioners has argued that the Act VII of 1952 contravenes the provisions of Article 14 as it treats those Lambardars, who have been elected as Members to the Punjab Legislative Assembly as favoured citizens. The argument of the learned counsel is that there must have been a large number of Lambardars who wanted to be elected to the Punjab Legislative Assembly but because it was a disqualification under Article 191 of the Constitution, and the disqualification had not been removed, those Lambardars refrained from contesting the elections. The learned counsel concludes that a distinction has thus been made between Lambardars, who stood and were elected to the Assembly, and the Lambardars who kept back on the assumption that they were disqualified. Article 13 (paras. 1 and 2) and Article 14 of the Constitution run as under:

13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The state shall not make any law which takes away or abridges the rights conferred by this Part and any law, made in contravention of this clause shall, to the extent of the contravention, be void.

14 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The back-ground of these articles is given in the minority judgment of Patanjali Shastri C. J. in case reported in A.I.R. 1952 Supreme Court page 75 at page 79 as under:

"The question next arises as to whether the provision, thus understood, violates the prohibition under Article 14 of the Constitution. The first part of the article, which appears to have been adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India and thus enshrines what American Judges regard as the "basic principle of republicanism" (c.f. Ward *v.* Flood, 17 Am. Rep. 405). The second part which is a corollary of the first and is based on the last clause of the first section of the 14th Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism, or

as an American Judge put it "it is a pledge of the protection of equal laws' Yick Wo *v.* Hopkins, (1886) 118 U.S. 356 at p. 369, that is, laws that operate alike on all persons under like circumstances. And as the prohibition under the article is directed against the State, which is defined in Art 12 as including not only the legislatures but also the Governments in the country. Art 14 secures all persons within the territories of India against arbitrary laws as well as arbitrary application of laws This is further made clear by defining "law" in Art. 13 (which renders void any law which takes away or abridges the rights conferred by Part III) as including, among other things, any "order" or "notification", so that even executive orders or notifications must not infringe Art. 14 This trilogy of articles thus ensures non-discrimination in State action both in the legislative and the administrative spheres in the democratic republic of India".

The learned counsel for the petitioner has relied upon the majority view in the above mentioned case In that case the Supreme Court considred the validity of the West Bengal Special Courts Act (X of 1950) which provided for a speedier trial of certain offences which the State Government by general or special ordinance in writing direct The majority view was as under:

"Per Fazl Ali, Mahajan, Mukherjea and Chandra Sekhara Aiyar JJ.—The impugned Act has completely ignored the principle of classification followed in the Criminal P C and it proceeds to lay down a new procedure without making any attempt to particularize or classify the offences or cases to which it is to apply (Para 24).

The Act itself lays down a procedure which is less advantageous to the accused than the ordinary procedure, and this fact must in all cases be the root cause of the discrimination which may result by the application of the Act (Para 27)

Speedier trial of offences may be the reason and motive for the legislation but it does not amount either to a classification of offences or cases The necessity of a speedy trial is too vague, uncertain and elusive criterion to form the basis of a valid and reasonable classification (Para 37).

It is no classification at all in the real sense of the term as it is not based on any characteristics which are peculiar to persons or to cases which are to be subject to the special procedure prescribed by the Act The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of Art 14 To get out of its reach it must appear that not only a classification has been made but also that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection (Para 37)

Even if it be said that the statute on the face of it is not discriminatory, it is so in its effect and operation inasmuch as it vests in the executive government unregulated official discretion and therefore has to be adjudged unconstitutional. (Para 38).

A rule of procedure laid down by law comes as much within the purview of Art 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination (Para 45)

If a legislation is discriminatory and discriminates one person or class of persons against others similarly situated and denies to the former the privileges that are enjoyed by the latter, it cannot but be regarded as "hostile" in the sense that it affects injuriously the interests of that person or class Of course, if one's interests are not at all affected by a particular piece of legislation, he may have no right to complain But if it is established that the person complaining has been discriminated against as a result of legislation and denied equal privileges with others occupying the same position, it is not incumbent upon him, before he can claim relief on the basis of his fundamental rights, to assert and prove that in making the law, the legislature was actuated by a hostile or inimical intention against a particular person or class.

For the same reason it cannot be contended that in cases like these, the Court should enquire as to what was the dominant intention of the legislature in enacting the law and that the operation of Art. 14

would be excluded if it is proved that the legislature had no intention to discriminate, though discrimination was the necessary consequence of the Act. When discrimination is alleged against officials in carrying out the law a question of intention may be material in ascertaining whether the officer acted *mala fide* or not, but no question of intention can arise when discrimination follows or arises on the express terms of the law itself."

The learned counsel for the petitioner also referred to certain American Authorities. It would be useful to reproduce the observations made in those cases:

In 81 Lawyers Edition United States Supreme Court Reports, p. 109, it has been laid down as under:

"The equal protection clause of the Fourteenth Amendment does not preclude the states from resorting to classification for the purposes of legislation, but only requires that the classification be reasonable, not arbitrary, and rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

In United States Supreme Court Reports Book, 30 p. 578 it has been laid down:

"1. The Fourteenth Amendment does not prohibit legislation which is limited in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

In 66 Lawyers Edition United States Supreme Court Reports p. 255 it has been laid down as under:

"6. The legislative discretion to grant or withhold equitable relief in any class of cases must, under the equal protection of the laws clause of U.S. Const. 14th Amend., be so exercised as not to grant equitable relief to one, and to deny it to others under like circumstances and in the same territorial jurisdiction."

In 25, Lawyers Edition United States Supreme Court Report, p. 989 it has been laid down as under:

"1. The equality clause in the 1st section of the Fourteenth Amendment, *viz.* that which prohibits any State from denying to any person the equal protection of the laws, contemplates the protection of persons, against unjust discriminations by a State, it has no reference to territorial or municipal arrangements made for different portions of a State.

2. It was not intended to prevent a State from arranging and parceling out the jurisdiction of its several courts as it sees fit, either as to territorial limits, subject-matter or amount, or the finality of their several judgments or decrees.

3. Each State has full power to make political sub-divisions of its territory for municipal purposes, and to regulate their local government, including the constitution of courts, and the extent of their jurisdiction."

Reliance was also placed by the learned counsel for the petitioner on case Lachhman Dass Kewal Ram *v.* the State of Bombay 1952 Supreme Court, p. 235. The Supreme Court, however, in a later case Sayed Qasim Razvi *v.* State of Hyderabad reported in A.I.R. 1953, p. 156 at p. 162, considered the observations made in Lachhman Dass's case. The majority view in this later case Sayed Qasim Razvi *v.* State of Hyderabad, was:

"It (the Court) has got to consider whether the procedure, actually followed, did or did not proceed upon the basis of the discriminatory provisions. In our opinion a mere threat or possibility of unequal treatment is not sufficient. If actually the accused has been discriminated against, then and then only he can complain, not otherwise."

In A.I.R. 1951 S.C. 318, at page 326, the principles, underlying Art. 14 of the Constitution, have been summarised and they run as under:

"1. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands

and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

2. The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

3. The principle of equality does not mean that every law must have universal application for all persons who are not by nature attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

4. The principle does not take away from the State of the power of classifying persons for legitimate purposes.

5. Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

6. If a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

7. While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis."

In the present case the contention of the learned counsel for the petitioner is that the Legislature by making the provisions of the Act retrospective has tried to benefit those Lambardars who were fortunate enough to be elected. The important question, therefore, that arises for determination is whether the classification is reasonable or not. As stated above, the second part, of Art. 14 of the Constitution, is based upon the last clause of the first section of the 14th amendment of the American Constitution. It would, therefore, be useful to reproduce the observations made by Prof. Willis in "Constitutional Law" page 578. which run as under:

"The guaranty of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed. 'The inhibition of the amendment was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.' It does not take from the states the power to classify either in the adoption of police laws or tax laws, or eminent domain laws, but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarly, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis. [Constitutional Law, by Prof. Willis (Edn. 1, page 578)]."

These observations were quoted with approval in case The State of Bombay and another *v.* F. N. Balsara, in A.I.R. 1951 S.C., p. 318 at page 326.

In A.I.R. 1951 S. C., 41 at page 42, also it was laid down as under:

"The presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles."

In A.I.R. 1952 Supreme Court 123, it was held by Patanjali Sastri C. J. with whose ultimate decision the majority of judges concurred as under:

"All legislative differentiation is not necessarily discriminatory. In fact, the word "discrimination" does not occur in Art. 14. The expression "discriminate against" is used in Art. 15(1) and Art. 16(2), and it means, according to the Oxford Dictionary, "to make an adverse distinction

with regard to, to distinguish unfavourably from others." Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and is based on any of the grounds mentioned in Arts. 15 and 16, it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to those articles. But the position under Art. 14 is different. Equal protection claims under that article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies."

It was held by Fazl Ali J as under:

"The clear recital of a definite objective furnishes a tangible and rational basis of classification to the State Government for the purpose of applying the provisions of the Ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and preservation of peace and tranquillity."

Keeping in view the principles laid down in the above authorities, we have to consider whether Act VII of 1952 made a reasonable classification or not. It is not disputed that there is nothing wrong in exempting the Lambardars from the disqualification imposed under Article 191 of the Constitution by making a specific provision with regard to them. The objection of the petitioner is that the Legislature of the Punjab by making the Act retrospective has tried to benefit the few Lambardars, who were lucky to be elected. I may, however, state that so far as the Act is concerned it treats all the Lambardars alike. The Act imposed no inequality of any kind. The effect of bringing on the Statute Book of this enactment was to cure an omission of the Legislature to make law affording protection to the Lambardars from the disqualification of Article 191. Such protection had been enjoyed by them in the past when there existed similar provisions in Government of India Act 1935 and there was nothing new in the protection. The Legislatures in the other States also gave similar protection to persons holding positions analogous to Lambardars. The provisional Legislature enacted Punjab Act IV of 1950 which only gave protection to Lambardars who were Members of the Provisional Legislature. The Act VII of 1950, on the face of it, does not try to discriminate. It treats all Lambardars alike, and gives similar protection to all of them. The retrospective application of the Act to all Lambardars, does not, in my opinion, offend against the principle of reasonable classification. Assuming that there were some lambardars, whose nomination papers for the State Assembly were rejected on the ground of their being Lambardars, they could have equally taken the benefit of this enactment in case they had filed election petitions. It is possible, as argued by the learned counsel for the petitioner, that there were some Lambardars whose nomination papers were rejected and they did not file election petitions, and it is possible, thus, that in those cases the impugned Act might have resulted in some differentiation, but the Act is not to be condemned merely on that score, as has been laid down in A.I.R. 1953 Superme Court, p. 91:

"A Legislature which must, of necessity, have the power of making special laws to attain particular objects must have large powers of selection or classification of persons and things upon which such laws are to operate. Hence mere differentiation or inequality of treatment does not *per se* amount to discrimination, and it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the legislature has in view in order to invalidate an enactment under Article 14.

Moreover, as laid down in Sayed Qasim Razvi's case, a mere threat or possibility of unequal treatment is not sufficient. If actually the accused has been discriminated against, then and then only he can complain, not otherwise.

Keeping the above test in view, and also having regard to the object of the enactment, namely to remove the disqualification imposed under Article 191 of the Constitution, the selection or differentiation is neither unreasonable nor arbitrary. It has also not been shown not to rest on any rational basis. The enactment fulfils the requirement laid down in the Constitutional Law by Professor Willis "that all persons subjected to such legislation shall be treated alike under

like circumstances and conditions both in the privileges conferred and in the liabilities imposed."

It was argued by the learned counsel for the petitioner that the Legislature should not have brought this Law on the Statute Book as it benefitted the Lambardars who had been elected. In my opinion it is not for a court of Law to go into ethics behind the legislation. The Courts are only concerned with the question as to whether the classification is reasonable or not. It has been laid down in A.I.R. 1952 Supreme Court, p. 123 at page 131:

> "It is well settled that a legislature for the purpose of dealing with the complex problems that arise out of an infinite variety of human relations, cannot but proceed upon some sort of selection or classification of persons upon whom the legislation is to operate. The consequence of such classification would undoubtedly be to differentiate the persons belonging to that class from others, but that by itself would not make the legislation obnoxious to the equal protection clause. Equality prescribed by the Constitution would not be violated if the statute operates equally on all persons who are included in the group, and the classification is not arbitrary or capricious, but bears a reasonable relation to the objective which the legislation has in view. The legislature is given the utmost latitude in making the classification and it is only when there is a palpable abuse of power and the differences made have no rational relation to the objectives of the regulation, that necessity of judicial interference arises."

In A.I.R. 1953 Supreme Court, p. 10 it was held that even a classification can be made on geographical basis. The Supreme Court in that case held "The Abducted persons (Recovery and Restoration) Act 1949 to be valid." In the present case as the impugned Act applied to all Lambardars retrospectively and thus gave protection to all Lambardars who had been elected from being disqualified, without making any distinction as between those Lambardars, in my opinion the Act is valid and is not hit by the provisions of Article 14 of the Constitution.

It is also contended by the respondent that the disqualification imposed upon him by Article 191 does not apply to him in view of the Punjab Legislative Assembly (Removal of Disqualifications) Act 1937. Though my view is that the Act of 1937 does not afford protection to respondent No. 1 because it was not enacted after the coming into force of the Constitution in pursuance of Article 191. As I have, however, already held that the Punjab Act VII of 1952 gives enough protection to the respondent, it is not necessary to go into the effect of the Act of 1937.

Issue No. 2.—In view of my findings on issues Nos. 1 and 3, issue 2 does not arise. I may, however, state that if issue No. 3 had been decided against the respondent, in that case the fact, that the respondent removed the disqualification after the filing of nomination papers and before the date of scrutiny, would not have made any difference. A candidate, in order to be qualified to stand for election, must possess the qualification both on the date of nomination as well as on the date of scrutiny. It is not enough if he possesses the qualification on the date of scrutiny and did not possess the same on the date of nomination

Issue No. 4.—The respondent has admitted that he was an assessor at the relevant time of the Sessions Court at Ludhiana, but it is contended that the fact that the respondent was an assessor did not disqualify him from standing as a candidate. It is, however, urged on behalf of the petitioner that an assessor holds an office of profit and as such is disqualified from standing. Reliance is placed on article 191 of the Constitution, already reproduced heretofore, which disqualifies persons holding office of profit from standing as candidates

Assessors are appointed under section 319 of Criminal Procedure Code which runs as under:

> "*Liability to serve as jurors or assessors.*—All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial, held within the district in which they reside, or, if the Local Government, on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed."

Section 320 Criminal Procedure Code provides a list of certain persons mostly holders of certain offices who are exempt from liability to serve as assessors,

Sections 321 to 324 relate to the preparation and publication and revision of the list. Section 332 provides the penalty in case an assessor fails to attend without lawful cause

A reference to the wording of Article 191 of the Constitution shows that a person is disqualified if he "holds" an office of profit. The word "holds" implies an act of violation on the part of person holding the office of profit. This also implies that if the person were so minded, he can cease to hold that office by resigning or severing his connection. These criterions, however, do not hold good in the case of an assessor One can be appointed an assessor whether one likes it or not, and one may still be kept on the list of assessors even if one wants to no longer remain an assessor.

An assessor is called upon to assist a Court in Sessions trial in coming to a finding with regard to the guilt of a person being tried in the Sessions Court. The opinion of the assessor may or may not be accepted by the Court The assessor is paid the daily expenses for his presence in Court. The money paid to him is similar to the diet money that is paid to a witness when he is summoned to give evidence with regard to matters within his knowledge. Can it be said that because he would get the diet money for giving evidence, a witness holds an office of profit? He is called to appear as a witness because he knows something relevant about the guilt or otherwise of the accused person and because his evidence helps the Court in coming to a finding with regard to the guilt of the person tried in the Court. In my opinion the position of an assessor is to some extent analogous to that of a witness in this respect.

In a recently decided case Bijay Singh *Vs.* Narbada Charanlal published in 1953 *Gazette of India*, p 29 it has been held that the fact that a person is an assessor does not disqualify him from standing as a candidate I agree with the reasoning adopted in that case. Issue No. 4 is, therefore, decided against the petitioner

The petition consequently fails and is dismissed.

In view of the fact that Act VII of 1952 was not even in existence when the election petition was filed and it is this enactment which has resulted in the dismissal of the election petition. I shall, while dismissing the petition, leave the parties to bear their own costs

The 24th June 1953.

(Sd.) HANS RAJ KHANNA, *Judicial-Member.*

Shri Sant Singh *Versus* Shri Shamsher Singh etc

ORDER

(Per PARMA NAND SACHDEVA, *Advocate-Member*)

I had the benefit of going through the Order proposed to be passed by my learned brother Shri Hans Raj Khanna, Judicial-Member, and I am inclined to agree with his findings on all the issues except issue No. 3.

Issue No. 3.—There is no doubt that the office of a Lambardar is an office of profit under the Punjab State and a disqualification under Article 191(1)(a) of the Constitution of India, which provides that:

> (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—
>
> (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder.

This provision in the Constitution is more or less a reproduction of Section 69 of the Government of India Act 1935 which provided that:

> (1) A person shall be disqualified for being chosen as and for being, a member of the Provincial Legislative Assembly or Legislative Council,
>
> (a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder.

It will be better to trace the history of legislation regarding the removal of disqualification passed by the Punjab Legislative Assembly from time to time.

In 1937 the Punjab Legislature passed an Act known as the Punjab Legislative Assembly (Removal of Disqualifications) Act II of 1937 which runs as follows:

"*Preamble.*—Whereas it is expedient to provide in accordance with Section 69(1)(a) of the Government of India Act, 1935, that the holders of the offices hereinafter mentioned shall not be disqualified for election to the Punjab Legislative Assembly, it is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Punjab Legislative Assembly (Removal of Disqualifications) Act 1937.

2. *Removal of certain disqualifications.*—A person shall not be disqualified for being chosen as, or for being a member of the Punjab Legislative Assembly by reason only of the fact that he holds any of the following offices, namely:—

(1) the office of Parliamentary Secretary or of Parliamentary Private Secretary, if and when created.

(2) any of the offices shown in the schedule to this Act.

SCHEDULE

1. Lambardar.....
2. .....
3. ....
4. .....

After partition the sitting Members constituted the Provisional legislature of the Punjab State and as the office of a Lambardar was an office of profit under the State, according to the Constitution, Ordinance No. III of 1950 was issued by the Governor of the Punjab to the effect that:

"A person shall not be deemed to be disqualified for being a member of the Legislature of the State of Punjab by reason only of the fact that he holds an office of Lambardar."

This Ordinance by its very wording showed that it was meant only to protect the Lambardar members of the Provisional Legislatures of the Punjab. Thereafter Punjab Act IV of 1950 [The Punjab Provisional Legislature (Prevention of Disqualification) Act, 1950], came into force and this was practically a reproduction of the Ordinance III of 1950. This was also applicable only to the sitting members of the Provisional Legislature of the State—then functioning under Article 382 of the Constitution.

It is necessary to examine the provisions of Act II of 1937, with a view to see whether these could remain alive and be in force after the promulgation of Article 191 of the Constitution. It may be stated that the Provisional Legislature of the State was fully alive to the fact that as the provisions of Act II of 1937 were directly in conflict with the clear provision of the Constitution, that Act clearly stood repealed and the necessity was felt for getting first an Ordinance III of 1950 and the Act IV of 1950 passed with a view to protect the Lambardar members of the Provisional Legislature in the State. Similarly after the first regular elections based on adult franchise in accordance with the New Constitution, the present Punjab Legislative Assembly was formed. The elections were practically over in the month of January and the members took the oath of allegiance in the first meeting of the Assembly on 3rd May, 1952. The State Assembly brought on the Statute Book Act VII of 1952 known as the Punjab State Legislature (Prevention of Disqualification) Act 1952 providing that a person shall not be disqualified for being chosen as and for being a member of the Punjab State Legislature by reason only of the fact that he holds any of the offices of profit under the State including that of a Lambardar.

It is important to note that under Section 1(2) it was laid down that this Act shall be deemed "to have come into force on the 26th day of January, 1950". It may further be noted that by Section 3 of the said Act, the Punjab Legislative Assembly (Removal of Disqualification) Act, 1937, and the Punjab Provisional Legislature (Prevention of Disqualifications) Act, 1950, were repealed.

With a view to fully appreciate the background of this legislation it is necessary to reproduce at length the Statement of Objects and Reasons of this Act as given in Bill No. XII of 1952 which runs as below:

"A Bill to declare certain offices of profit not to disqualify their holders for being chosen as and for being, members of the State Legislature".

STATEMENT OF OBJECTS AND REASONS

"Article 191(1)(a) of the Constitution of India provides that a person shall be disqualified for being chosen as, and for being, a member of the House of Legislaure of a State, if he holds any office of profit under the Government of India or the Government of any State, specified in the 1st Schedule to the Constitution, other than an office declared by the Legislature of the State by law not to disqualify its holder.

This Bill accordingly seeks to save from disqualification members of the first Legislature of the State following the first general elections held under the Constitution of India, who held an office under the State Government which was not a whole-time office and to which no regular salary was attached. For the future, the legislation will secure that the electorate will not be debarred from choosing as members of the State Legislature, persons who, though they hold certain offices, which might be called offices of profit under the State Government, are not whole-time Government servants. It is also intended to save from disqualification persons, who might be appointed to legislative offices such as Parliamentary Secretaries etc."

The above clearly shows that the Bill, which subsequently took the shape of Act VII of 1952, was moved for securing three objects:

(a) to save from disqualification members of the 1st Legislature of the State following the 1st General Elections held under the Constitution of India, who held an office of profit under the State Government (Lambardars etc.),

(b) to legislate for future that the electorate will not be debarred from choosing as members of the State Legislature, persons though they held certain offices of profit under the State Government including the office of a Lambardar,

(c) to save from disqualification persons who might be appointed a legislative offices such as Parliamentary Secretary.

The above Act was passed on 9th August, 1952, and published in *Punjab Government Gazette* Extraordinary *vide* notification dated the 9th August, 1952.

Objects, mentioned at (b) and (c) could very easily be secured even if the Act had come into force from 9th August 1952, *i.e.* the date of its promulgation, but object at (a), *i.e.*, to save from disqualification some members of the 1st Legislature of the State, *i.e.*, Lambardars who had been elected to the Assembly, could not be secured without making a provision in section 1(2) that the Act shall be deemed to have come into force on the 26th day of January, 1950, *i.e.*, the date on which the major portion of the Constitution came into force.

There is no dispute with regard to the powers of the Legislative Assembly to pass an Act of the kind and to make it applicable from the date of its promulgation for securing the objects mentioned at (b) and (c) above. But it is strongly contended on behalf of the petitioner that the provision with regard to making the Act, passed on 9th August, 1952, retrospective in effect (deemed to have come into force on the 26th day of January, 1950) is *ultra vires* of the Constitution.

With a view to examine this aspect of the case it is first necessary to make a few introductory observations.

Lambardari is an old institution of the Punjab State and Lambardars are a well defined class by themselves.

The present Punjab State Assembly also appears to be fully alive to the fact that the Punjab Legislative Assembly (Removal of Disqualifications), Act 1937 and the Punjab Provisional Legislature (Prevention of Disqualification) Act 1950 were not sufficient to protect the Lambardar members of the present State Assembly, and, therefore, decided to promulgate Act VII of 1952 on 9th August, 1952, and provided that it shall be deemed to have come into force on the 26th day of January, 1950. In case the old Acts, mentioned in Section 3 of the New Act, were

legally sufficient to achieve the objects (a), (b) and (c) mentioned above, there was hardly any need of placing this Act on the Statute Book. It was argued on behalf of the respondents that the Act was passed by way of taking abundant care and precaution that if the old Acts were not legally sufficient to ensure the three objects, mentioned in the Statement of Objects and Reasons, this Act would achieve the said objects. The very fact, that the law officers of the Government were in doubt as to the exact position of the State of law, the whole question has to be examined more closely. The respondent contended that the disqualification, imposed on him by Article 191 of the Constitution, does not apply to him in view of the Removal of Disqualification Act 1937. This position is untenable as the provisions of this Act were inconsistent with the Statutory provision relating to disqualification as laid down in Article 191 of the Constitution. Therefore, this Act must be considered to have been automatically repealed from the date of promulgation of the Constitution. On this point I am in agreement with the views expressed by my learned brother that the Removal of Disqualifications Act of 1937 cannot afford any protection to the respondent.

I am thus clearly of the view that respondent No. 1 was disqualified from standing as and for being chosen as and for sitting as a member of the Punjab Legislative Assembly on accuont of his holding an office of profit, *i.e.* the post of a Lambardar under the Punjab State.

In case the Act had not been given a retrospective effect from 26th January, 1950, the respondent was clearly disqualified from standing as or for being chosen as a member of the Assembly on account of the following reasons:

Lambardari was a disqualification:

(a) on the date when the Governor called upon the various constituencies to elect members.

(b) on the date of nominations (5th November 1951).

(c) on the date of scrutiny (9th November 1951),

(d) on the date of election (January, 1952),

(e) on the date of Gazette notifications (March-April, 1952),

(f) on the date of the first meeting of the Assembly (3rd May 1952)

(g) on the date of filing the present election petition (28th May 1952), and

(h) on the date of the Constitution of the Tribunal for hearing this petition (16th July 1952).

But for the provision making this Act retrospective from 26th January, 1950, all Lambardar members of the Legislative Assembly or the Legislative Council of Punjab State had incurred penalty under Article 193 of the Constitution which provides that:

> "If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of Article 88 or when he knows that he is not qualified or that he is disqualified for membership thereof or that he is prohibited from so doing by the provisions of any law made by the Parliament or the Legislature of the State, he shall be liable in respect of each day, on which he so sits or votes, to a penalty of Rs. 500 to be recovered as a debt due to the State."

Keeping in view the various dates given above, on which Lambardari was and continued to be a disqualification but for the retrospective applicability of Act VII of 1952, Lambardars, who formed a well known class by themselves, may be divided into the following categories:

(1) Those belonging to the class who thought they were not qualified to stand in view of the clear provision of the Constitution.

(2) Those, who thought of standing for election but were prevented after seeking legal advice from doing so on account of the above provision.

(3) Those who were either not conversant with the disqualification class or thought it proper to ignore it and filed their nomination papers.

(4) Those whose nomination papers were rejected on objection being taken against them on the ground of disqualification under Article 191 (instances are not lacking)

(5) Those who took this result as final and legally binding and never cared to file an election petition as the law had not changed by that time.

(6) Those against whom there was no objection on the scrutiny date and they contested election with success but against whom no election petition has been filed because the law was not changed by that time.

(7) And finally those who have been returned and against whom election petitions have been filed (respondent No. 1 in the above case and Shri Ratan Amol Singh, respondent No. 1 in another petition, Shri Maharaj Singh *versus* Shri Ratan Amol Singh etc., pending with this Tribunal).

Section 1(2) of the Act seeks to protect the last two categories of the Lambardars by making the Act retrospective from the 26th day of January, 1950. It is strongly contended on behalf of the petitioner that this retrospective clause of the Act is *ultra vires* of the fundamental rights, *i.e.*, rights of equality as laid down in Article 14 of the Constitution and being inconsistent and in derogation of the fundamental rights, is void under Article 13(1) of the Constitution.

Normally all Laws are prospective and came into force from the date of their promulgation and if Act VII of 1950 had been made to come into force from 9th August, 1952, nobody could take any objection to it because the State Legislature had full authority to pass an Act of the kind under Article 191(1)(a). It has been argued with force before the Tribunal that the Clause enforcing the Act from 26th January 1950 has been provided only to favour the few fortunate Lambardars falling in the last two categories, *i.e.* Nos. 6 and 7, as given above. Thus the Act is discriminatory in its application inasmuch as the remaining categories of Lambardars Nos. 1 to 5, could not possibly get any advantage of the Act as they were not in a position to anticipate that an Act of the kind would be passed on 9th August 1952 and made retrospective from 26th January 1950.

Various authorities have been cited by both the parties before the Tribunal laying down certain principles under which an Act passed by a State Legislature has been held to be *ultra vires* or *intra vires* of the Constitution and some of these have been cited in the order passed by my learned brother. I have carefully gone through all the authorities both for and against but I have not come across any ruling of the Hon'ble Supreme Court which might be called on all fours with the facts of the present case and which might be taken to be binding on the Tribunal for final adjudication on the point in issue. The clause, making the Act retrospective in application, is objected to and it is to be seen whether this is *intra vires*. There is no doubt that a Legislature has powers to make an Act retrospective but it is to be seen whether the underlying motives and objects, for making it retrospective, are sound, reasonable and bonafide. The object for making it retrospective has been clearly expressed in the Statement of Objects and Reasons in the following words:

> "to save from disqualification the Lambardar members of the 1st Legislature of the State following the first general election held under the Constitution of India."

This by itself is not sufficient justification for making the Act retrospective as it discriminates and differentiates between the various categories of Lambardars enumerated in Nos. 1 to 7 and places categories Nos. 6 and 7 at an advantage over the remaining categories Nos. 1 to 5.

The learned Advocate General of the State and Mr. Daphtry, the learned Advocate for the respondent tried to meet the arguments of the petitioner that the Act was discriminatory in its nature by submitting that there was nothing to prevent those Lambardars, whose nomination papers were rejected, from filing the election petitions and they could also get equal benefit from the Act. This argument is both fallacious and untenable as these persons could not possibly imagine that a legislation of the kind was in contemplation and would be ultimately brought on the Statute Book.

Article 173 of the Constitution lays down qualification for membership of the State Legislature as below:

> "A person shall not be qualified to be chosen to fill a seat in the legislature of a State unless he,
>
> (a) is a citizen of India;
>
> (b) is, in the case of a seat in the Legislative Assembly, not less than 25 years of age, and, is in the case of a seat in the Legislative Council, not less than 30 years of age, and
>
> (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

In the preamble to the Constitution it is specifically laid down to the following effect:

> WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into A SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:
>
> JUSTICE, social, economic and political;
>
> LIBERTY of thought, expression, belief, faith and worship;
>
> EQUALITY of status and of opportunity, etc., etc.

In view of the above provisions, equality of status and of opportunity ought to be provided to all the members of Lambardar class *i.e.*, whether they are qualified to stand or not qualified to stand. They were not qualified to stand under Article 191(1)(a) and the State Legislature had a Statutory right to remove this disqualification but was not justified in differentiating in the manner between the various categories of Lambardars and making this discriminatory legislation simply for protecting the few Lambardars returned to the Assembly and retaining them as members of the said Assembly. It is nowhere stated in the Statement of Objects and Reasons that why the Legislature thought it necessary to make the Act retrospective and why it was considered absolutely essential to retain these few persons as members of the Assembly, by making the Act retrospective in application. As this provision is a clear denial of the rights of equality between the various members of the class of Lambardars, I am of the opinion that the provision making the Act retrospective from 26th January, 1950, is clearly *ultra vires* of the Constitution.

The majority view of the A.I.R. 1952 Supreme Court reproduced at length, in the order of my learned brother at page 11 may be read with advantage as supporting the above view. Applying the principles laid down in the said view to the facts of the present case it may be stated that the Act under discussion (VII of 1952) has been made retrospective without making any effort to show its justification. The Act, as already remarked, places Lambardars of categories 6 and 7 at an advantage over their brethern in categories 1 to 5, and thus is discriminatory. The classification made is neither just nor reasonable ground. This legislation is discriminatory and discriminates one set of Lambardars as against others similarly constituted and denied to the latter the privileges that are enjoyed by the former and, therefore, it has to be regarded as hostile in the sense that it affects injuriously the interests of the first five categories. Even the ruling cited in 81 Lawyers Edition United States Supreme Court Reports, p. 109 at page 110, reproduced at page 13 of my learned brother's order, provides "that the classification for the purposes of legislation is permissible but the classification must be reasonable, not arbitrary and rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike".

Similarly the quotation reproduced from the United States Supreme Court Reports, Book 30, p. 578, reproduced at page 13 of my learned brother's order, lays down "that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed". This would show that the Act in dispute, so far as it removes the disqualifications of a Lambardar for future, this guarantees equal treatment to all the Lambardars but the provision to make it retrospective places some Lambardars in an advantageous position over their unfortunate brethren as enumerated in the various categories.

There is no doubt that the presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A perusal of the Statement of Objects and Reasons of the Act especially the object, (a), as mentioned above: "to protect the sitting Lambardar Members of the Assembly from disqualification is a very eloquent proof of the discriminatory nature of the legislation". Discrimination involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context.

The quotation reproduced at page 14 in the order of my learned brother from All India Report 1952 Supreme Court page 123 at p. 131 lays down a very important proposition of law bearing on the subject to the effect that:

> "equality prescribed by the Constitution, could not be violated if the Statute operates equally on all persons who are included in the group and the classification is not arbitrary or capricious but bears a reasonable relation to the objective which the legislation has in view."

The above shows that the legislature has full latitude in making the classification and it is only when there is a palpable abuse of the power and the differences made have no rational relation to the objectives of the regulation, that necessity of judicial interference arises

Applying the above tests to the retrospective clause of the above Act, it is clear that the classification of the Lambardars benefited by the Act is not only arbitrary or capricious but bears no reasonable relation to the objective which the legislation has in view.

In view of the above, I am clearly of the opinion that the disqualification of the respondent, arising from his holding the office of Lambardari, has not been removed by the Punjab State Legislature (Prevention of Disqualification) Act VII of 1952, as its Clause (1)(2) making the Act retrospective from 26th January 1950 is *ultra vires* of the Constitution I will, therefore, find issue No 3 in favour of the petitioner and against the respondent The result is that this petition is to be accepted and the election of Shri Shamsher Singh is set aside as void

In view of the special features of the case that the election is being set aside on the interpretation of a Statute, which is purely a question of law, and the respondent has not done anything at all to prolong the proceedings, I think it will be just to leave the parties to bear their own costs in the proceedings and I order accordingly

With regard to costs of the Advocate-General Punjab and the local Government Pleader, I agree with the Order proposed to be passed in this case by my learned colleague, Shri Hans Raj Khanna Judicial-Member

The 24th June 1953 (Sd) P N SACHDEVA, *Advocate-Member*

Shri Sant Singh *Vs* Shri Shamsher Singh etc

ORDER

(PER S HARBANS SINGH, *Chairman*)

I have had the advantage of going through both the orders proposed to be delivered by my two colleagues There is no manner of doubt that the Punjab State Legislature (Prevention of Disqualification) Act VII of 1952 is indiscreet so far as its retrospective aspect is concerned, and it did grave injury to other Lambardars etc, as detailed by my learned colleague Mr Sachdeva However, it is one thing to condemn a piece of legislation as being ill-conceived and in bad taste, but quite another to hold that the legislation in question is *ultra vires* the Constitution There is an initial presumption in favour of the constitutionality of a Statute, and setting aside of an election is a serious matter In case of a doubt, therefore, where there can be two opinions about the matter, I would be rather inclined to take the view which goes in favour of the constitutionality of the Statute and in favour of upholding the election My learned colleague, Mr Khanna has dealt with the case at length and I respectfully concur in the conclusions arrived at and order proposed by him

The 24th June, 1953 (Sd) HARBANS SINGH, *Chairman*

Shri Sant Singh *Vs* Shri Shamsher Singh etc

ORDER OF THE TRIBUNAL

By majority it is held that the nomination paper of Shri Shamsher Singh respondent, was properly accepted and this petition is, therefore, dismissed

In view of the fact that Act VII of 1952 was not even in existence when the election petition was filed and it is this enactment which has resulted in the dismissal of this petition We shall, while dismissing the petition, leave the parties to bear their own costs The petitioner shall, however, pay Rs 200 as costs of the Advocate-General and Rs 50 as those of Local Government Pleader who assisted the Advocate-General in these proceedings

The 24th June, 1953 (Sd) HARBANS SINGH, *Chairman*

(Sd.) HANS RAJ KHANNA, *Judicial-Member.*

(Sd.) P. N SACHDEVA, *Advocate-Member*

ANNEXURE 'A'

ELECTION PETITION No. 155 OF 1952

Sardar Sant Singh—Petitioner *Versus* S. Shamsher S'ngh etc.—Respondents.

ORDER

Sardar Shamsher Singh was elected to the Punjab Legislative Assembly from Ludhiana Sadar Constituency in the 1st General Elections. Sardar Sant Singh, petitioner, who was one of the duly nominated candidates in the said election, has filed the present election petition praying that the election of Sardar Shamsher Singh, respondent No. 1, who shall hereafter be described as respondent, be declared void. The respondent in his written statement raised preliminary objections to the effect that the petition was not properly verified and that it did not fully comply with the provisions of Sections 81 and 83 of the Representation of the People Act, 1951. Objection under Section 81 of the Representation of the People Act, 1951, with regard to the limitation was given up, and on the pleadings of the parties the following preliminary issues were framed by the Tribunal:—

1. Is the petition not properly verified? If so, what is its effect?

2. Are paragraph 5 of the petition and the list attached with the application or any part thereof, liable to be struck off for non-compliance with the provisions of sub-section 2 of Section 83 of the Representation of the People Act, 1951, in respect of furnishing particulars?

3. Should the petitioner be permitted or required to give further and better particulars, and if so in what respect and on what terms?

The parties agreed hat no evidence was to be led on these issues.

At the time of the arguments, the learned counsel for the respondent gave up the objection contained in issue No. 1.

Issue No. 2.—The objection was with regard to sub-paragraphs "b" "c" and "d" of paragraph 5. In the corresponding list and in the sub-paragraph "b" there is an allegation of undue influence which was being exercised by S. Shamsher Singh, respondent and others. The names of the persons, who are said to have exercised the influence, are said to have been given in the list. The places namely, the villages in which the congregations were held and it was given out that respondent was a candidate of the Panth of Guru Gobind Singh and where the electors were made to take oath, are also given. The dates on which the meetings were held, the particular place in the village at which the same were held and which of the persons, mentioned in the list actually addressed the gathering or tried to influence the electors, the manner in which the oath was obtained and the persons who got the oath and the persons who were subjected to this undue influence, have not been mentioned.

The petitioner has argued that his allegations are only with regard to a general oath concerning the entire congregation and not about any particular persons individually taking oath. As the petitioner has given the names of the villages the names of the persons who have exercised the influence, after some consideration we feel that he should be required to give further particulars as to the exact time and date on which the various meetings were held and the places where the same were held and also specify which one or more of the persons, mentioned by him in the list, exercised the influence. It is made clear to him that he shall have to confine himself in this respect only to the names which he has already mentioned in the list and he will not be permitted to add any other name of the person who exercised the influence.

Para. 5.(c).—In the list the name of only one person has been mentioned though contents of sub-paragraph (c) of the petition indicates that allegations were with regard to more than one person. The petitioner will be confined only to the persons who are mentioned in the petition.

Para. 5(d).—In this paragraph the petitioner made an allegation that certain persons, mentioned in the list, incurred unauthorised expense on behalf of the respondent. No indication whatever is given as to the manner in which the expense was incurred, the amount of the expense, the date, time or place of the expense. The allegations in this paragraph are wholly vague and we are afraid it is not possible to permit the petitioner to fill in these lacunas. This paragraph should be deemed to be struck off.

[illegible] as above by the 10th November, 1952, with a copy to the opposite party who will file the reply by 14th November, 1952, on which day the issues on merits will be settled.

As the point involved was short, the petitioner will pay Rs. 16 as costs to the respondent.

Announced.

S. Sant Singh petitioner is present in person, while respondent No. 1 is represented by S. Joginder Singh, Advocate.

The 25th October 1952.

(Sd.) HARBANS SINGH, *Chairman.*
(Sd.) H. R. KHANNA, *Member.*
(Sd.) P. N. SACHDEVA, *Member.*

[No. 19/155/52-Elec.III/10735.]

By order,

P. R. KRISHNAMURTHY, Asstt. Secy.

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